



## MONTGOMERY COUNTY ETHICS COMMISSION

Kenita V. Barrow  
*Chair*

Mark L. Greenblatt  
*Vice Chair*

October 31, 2014

### Advisory Opinion 14-09-005

An SEC registered investment advisor (the “Advisor”) would like to use one of its internal marketing employees (the “Employee”) to reach out and solicit business with Montgomery County (the “County”). The Employee would solicit business via telephone conversations with the County. Neither the Employee nor the Advisor is required to register as a lobbyist because the thresholds for registration in 19A-21 will not be met. The Advisor has requested an opinion as to whether it may pay a bonus/commission to the Employee in light of the ban on contingent compensation of 19A-24.

Article V., 19A-21 to 19A-26 of the Montgomery County Public Ethics Law is entitled “Lobbying Disclosure.” Those provisions concern registration as a lobbyist, reporting on activities by registered lobbyists, and public access to reports. Section 19A-24 includes a prohibition on contingent compensation. It provides:

A person must not pay another person compensation that depends on or varies with the success or defeat of any legislative, administrative, or executive action by a County agency.

As this limitation appears in Article V of the Public Ethics Law addressing lobbying disclosure (registration and activity reporting), the question of interpretation is whether the prohibition extends beyond those required to register as lobbyists to others doing business with the County. The Commission concludes that the provision only applies to those who are required to register as lobbyists.

The compensation contingency prohibition as originally cast in Montgomery County was a prohibition on being employed as a lobbyist to do work that would be compensated based on the success of the lobbying activity. That law, passed in 1982 (Bill No. 70/75-81, effective January 1, 1983) provided at original 19A-19: “A person may not be employed as a registrant for compensation dependent in any manner upon the passage or defeat of any legislative, quasi-legislative or executive action by the County or an agency.” The language was changed to its current form in 19A-24, pursuant to Bill 33-89, effective April 26, 1990, with the current form of the law omitting the reference to “registrants” but more clearly stating the nature of the prohibition.

**Montgomery County Ethics Commission**

A memorandum prepared by Senior Legislative Counsel, Mike Faden, dated January 16, 1990, detailing proposed changes to the law in Bill 33-89 indicates that the “memo will describe, section by section, the major substantive amendments that [the Bill] makes to the current law. This memo will not list every change in language; some have substantive implications, but many are technical, clarifying, or stylistic.” Notably, no reference is made in the memorandum to new 19A-24, the inference being that the changes were intended to be “technical, clarifying, or stylistic.”

While 19A-24 is drafted broadly, it appears in the part of the law pertaining to requirements for registering lobbyists. Moreover, the Maryland State Ethics Law prohibition on contingent compensation, on which the Montgomery County law is based, clearly extends only to regulated lobbyists. The State’s Ethics Law, at SG 15-713 provides that:

*A **regulated lobbyist** may not:*

- (1) be engaged for lobbying purposes for compensation that is dependent in any manner on:
    - (i) the enactment or defeat of legislation;
    - (ii) the outcome of any executive action relating to the solicitation or securing of a procurement contract; or
    - (iii) any other contingency related to executive action or legislative action.
- [Emphasis added.]

Based on the above, the Commission concludes that 19A-24 only extends to persons who are registered lobbyists or who are required to register pursuant to 19A-21.

For the Commission:

A handwritten signature in blue ink, appearing to read "Kenita V. Barrow".

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Kenita V. Barrow, Chair